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BY THE HOUSE OF DELEGATES,

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MINORITY REPORT

OF THE

COMMITTEE ON ELECTIONS,

OF THE

HOUSE OF DELEGATES,

ON THE

CONTESTED ELECTIONS IN SOMERSET CO.

JANUARY SESSION, 1864.

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MINORITY REPORT.

To the Honorable the House of Delegates:

A minority of the Committee on Elections, to whom was referred the memorial of William J. Brittingham and others, of Somerset county, respectfully report, that said memorialists ask—

1st—That this House shall award to the memorialists the seats now occupied by the Delegates from Somerset county; or,

2d—That this House declare the election null and void, and the seats vacant, and order a new election for Delegates in Somerset county; or,

3d—That "an inquiry into all the matters in said memorial charged, may be ordered, with full power to send for persons and papers, and that all the circumstances relating to said election may be fully and fairly investigated, and when the facts are clearly ascertained, that such order may be taken by the House of Delegates as to them (may) seem most proper."

By section 55 of article 35 of the Code of Public General Laws, it is provided that, "the party intending to contest an election for the Senate or House of Delegates, shall give notice of such intention to the person returned, within thirty days after the Judges of election shall have made known publicly the state of the polls." Other sections of the same article pro-

vide a particular manner of taking examinations of witnesses in such cases, and section 62 provides that "the examinations of witnesses, taken in the manner prescribed," and in no other, shall be admitted in evidence.

There is no evidence before your Committee, that the provisions of these sections have been complied with, and, if they are consistent with the fundamental law of the State, and can properly be considered rules for this House, your Committee were evidently precluded from any inquiry under the first request into the contested election. The Constitution (art. 3, sec. 12) provides, that "each House shall be judge of the qualifications and elections of its members, subject to the laws of the State." The meaning hereby intended and expressed is, that the qualifications for office, and the rules for the conduct of elections, which are prescribed by the laws of the State, and in force at the time of the election, shall be the rules by which the House is to be bound, and to which it is to be subject, in making its decisions; and that it shall not declare any one elected, or duly qualified, or the reverse, unless the laws of the State which prescribe the manner of holding elections and the qualifications of officers warrant the conclusion. This opinion is based on the following reasons:

1st—By a well known rule of construction, the word *subject* relates to its nearest antecedents, qualifications and elections.

2d—If the House is to be the judge, *subject* to the laws of the State, those laws may deprive it altogether of its jurisdiction.

3d—It is expressly provided in the same section of the Constitution, that each House shall "determine the rules of its own proceedings."

This power to determine the rules of its own proceedings, whether in regard to contested elections or to any other subject, cannot be delegated to the General Assembly, or in any manner given away.

It may be urged that the sections of the Code before referred to *do* constitute rules of proceedings, which this House determined for itself, when its assent was given to the passage of the

law. But even if the assent of the House had *then* made those sections "rules of its own proceedings," they would only continue obligatory at its pleasure, upon that particular set of Delegates of whom it was composed at the time of the assent. At every session it is necessary to adopt a set of rules of proceedings, without which, the House would have no rules.

In order to a clear understanding of this question, this body must be viewed as an entirely separate and distinct body, with its individual rights and powers conferred upon it by the Constitution. It is only in the legitimate business of the General Assembly, that the House is joined with the Senate. With regard to the management of its own affairs, the appointment of its own officers, and the rules of its own proceedings, the joint action of the two bodies, resulting in the form of a statute, can not bind the House any more than it could bind the County Commissioners, if to them the Constitution had given the power of trying and deciding contested elections, and of determining the rules of their own proceedings. The same power can not be in each at the same time, any more than the same thing can be in two different places at the same time.

However, upon a deliberate examination of the Code, the sections before referred to will be found not to apply at all as a restriction upon the House in this case. They do not declare, expressly or by implication, that a contestant who fails to give the specified notice to the "person returned," shall be precluded from having an investigation and decision of his cause by this tribunal. They simply provide a method by which a contestant desiring to take examinations of witnesses, to be afterwards filed with his memorial and presented here, may place his opponent under a legal obligation to appear before a Justice of the Peace, to cross-examine witnesses, and avoid an ex-parte, or one-sided investigation. Without these provisions of the Code, the person returned would be under no obligation to appear before a Justice of the Peace, and the Justice of the Peace would have no power to compel the attendance of witnesses. The "*examinations of witnesses*" so taken, and no other, are to be admitted in evidence; but "examinations of witnesses" means nothing more nor less than depositions in writing. Your Com-

mittee have not admitted the *examinations* of witnesses. The witnesses themselves have appeared and testified. Nor could your Committee properly admit the examinations of witnesses taken in any other than the prescribed manner, unless those examinations had been taken by consent of parties, because the law provides only one manner of taking examinations, and your Committee would not admit any evidence so contrary to the ordinary rules of courts, as an examination taken without authority of law or consent of parties.

The memorialists, however, do not appear as contestants only. By the third request, they come before this Court as citizens of this State, part of the people, protesting against a great wrong and outrage, and violation of law—a wrong not aimed against the memorialists particularly, nor done by "the persons returned," but a wrong against the whole people of the State and against the cause of justice and right. The memorialists ask nothing for themselves individually; they ask only that such order may be taken by the House of Delegates as to them may seem most proper. It is not the candidates alone who are interested in this investigation. It is the cause of the people which is to be vindicated. The people have a right to a fair and free election by ballot to express their choice. If the honor and emolument of Delegates themselves were the special aim and object of the Constitution, in providing for their election; if it were their cause alone, the neglect of a contestant might well be urged *against him*, as a reason for refusing to hear his complaint. We are not to suppose, *without the strongest proof*, that it was ever intended that the negligence of three or four candidates would altogether deprive a whole county of that right which the founders of the State government esteemed so highly, that, making it the subject of an article of the "Declaration of Rights," (Art. 5,) they declared "*that the right of the people to participate in the Legislature is the best security of liberty, and the foundation of all free government.*

Notwithstanding the right to judge, conferred by the Constitution, if the defeated candidates should, by death or duress, be prevented from giving the notice, &c., and if that notice be a necessary prerequisite, the House would be deprived of its

Constitutional right, without any ground of neglect or delay on the part of any one to justify that deprivation. Which is a reduction to absurdity. Therefore the notice, &c., are not necessary prerequisites. It will appear in a previous report of your committee in regard to other contested elections from Somerset county (page 9) that the memorial of William J. Brittingham and others, was considered together with the other cases. The gentlemen from Somerset were notified of this determination of the Committee, and a copy of the notice, and a reply thereto are herewith filed. Referring to the previous report herein before mentioned, as setting forth more fully the law and facts upon which our conclusion is based, we recommend the adoption of the following resolution:

Resolved, That it appears to this House that there were such intimidation, fraud, injustice and illegality, in the election of Delegates in Somerset county, on the fourth day of November last, in contempt of law, and in violation of the freedom of elections, that the said election is void, and that the Speaker of this House issue his warrant for the election of four Delegates to represent Somerset county in the House of Delegates.

All of which is respectfully submitted,

JOHN S. TYSON, JR., *Chairman.*
GEORGE B. WESTCOTT,
CHARLES B. HITCHCOCK.